

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

AMERISURE MUTUAL INSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.) No.
)
IRON MOUNTAIN INFORMATION)
MANAGEMENT, LLC; IRON MOUNT, INC.;)
ACE AMERICAN INSURANCE COMPANY;)
and MARGARITA VENEGAS, as Guardian of)
the Estate of ANTONIO VENEGAS, a Disabled)
Person,)
)
Defendants.

NOTICE OF REMOVAL

ACE American Insurance Company (“ACE”) removes this action from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois, pursuant to 28 U.S.C. §§ 1441, 1446. In support, ACE states as follows:

Background

1. Amerisure Mutual Insurance Company (“Amerisure”) initiated this action on July 6, 2018, by filing a complaint against ACE and the other named defendants in the Circuit Court of Cook County, Illinois, in the action entitled *Amerisure Mutual Insurance Company v. Iron Mountain Information Management, LLC, et al*, Case No. 2018-CH-07976. A copy of the complaint is attached to this Notice of Removal as Exhibit A.
2. The complaint and summons directed at ACE was served on the Illinois Department of Insurance on July 6, 2018, and subsequently sent to ACE.
3. In the complaint, Amerisure brings a declaratory judgment action which seeks, among other things, a declaration that ACE owes the sole and primary duty to defend and indemnify Iron

Mountain Incorporated (“IM Inc.”) and Iron Mountain Information Management, LLC (“IMIM”) in a lawsuit brought against by Margarita Venegas., and that Amerisure owes no such duty. The referenced lawsuit is entitled *Margarita Venegas v. Iron Mountain, Inc. et al.*, Case No. 2015 L 1659, in the Circuit Court of Cook County, Illinois (the “Venegas Lawsuit”).

4. ACE now removes the complaint filed against them by Amerisure from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois, based on diversity of citizenship, 28 U.S.C. § 1332. Specifically, as stated in further detail below, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

5. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Circuit Court of Cook County, Illinois.

Amount in Controversy

6. This is an insurance coverage case. In the underlying lawsuit, plaintiff Venegas seeks to recover damages from IM Inc. and IMIM in the *Venegas Lawsuit* for their alleged negligence that allegedly caused injuries and damages sustained by plaintiff Venegas. The underlying Venegas suit involves hundreds of thousands of dollars in medical expenses, alone. IMIM and IM Inc. sought to attain primary coverage, specifically defense and indemnity costs, for the *Venegas Lawsuit*, from their insurer, Amerisure, which has policy limits of liability of at least \$1,000,000. Amerisure instituted this suit seeking a declaration that it may avoid its defense and indemnity obligations. Further, Amerisure seeks to pass its defense and indemnity obligation to ACE, another insurer of IMIM and IM Inc. Based on the nature of the underlying *Venegas Lawsuit* claims, the defense and indemnity of the *Venegas Lawsuit* is in excess of \$75,000, exclusive of interest and costs.

Diversity of Citizenship

7. Amerisure is a corporation incorporated under Michigan law with its principal place of business in Michigan.

8. ACE is a corporation incorporated under Pennsylvania law with its principal place of business in Pennsylvania.

9. IM Inc. is a corporation incorporated in Delaware with its principal place of business in Massachusetts. IM Inc. consents to removal.

10. IMIM is a Delaware LLC with its principal place of business in Massachusetts. IM Inc., which is incorporated in Delaware with its principal place of business in Massachusetts, is the sole Member of IMIM. IMIM consents to removal.

11. Margarita Venegas is a nominal defendant in this suit, only sued due to her status as the plaintiff in the underlying lawsuit, with no claim for relief alleged against her. (*See* Amerisure Complaint ¶ 4.) The citizenship of a nominal defendant in an insurance coverage action because they are a claimant in the underlying suit is not relevant to a diversity determination. *See CastlePoint Nat'l Ins. Co. v. Boyer-Rosene Moving & Storage, Inc.*, 13 CV 3885, 2014 WL 6821208, at *1 (N.D. Ill. Dec. 3, 2014); *R.C. Wegman Const. Co. v. Admiral Ins. Co.*, 629 F.3d 724, 726 (7th Cir. 2011); *TIG Ins. Co. v. Joe Rizza Lincoln-Mercury, Inc.*, 00 C 5182, 2002 WL 406982, at *2 (N.D. Ill. Mar. 14, 2002).

12. Venegas is a citizen of Illinois. According to the docket for the underlying lawsuit, she has not been served with the complaint.

13. The matter in controversy in this action is thus between citizens of different states.

Dated: August 3, 2018

Respectfully submitted,

By: /s/ Scott Stirling

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Information Management, LLC

CERTIFICATE OF SERVICE

I certify that I served the above **Notice of Removal** by sending copies of the document by mail and email on August 3, 2018, to the following:

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Dated: August 3, 2018

s/ Scott Stirling